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April 23, 1998

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BY OVERNIGHT MAIL

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20054

Re: **MCI Petition for Declaratory Ruling**
CC Docket No. 96-45

Dear Ms. Salas:

Enclosed for filing please find an original plus five (5) copies of the Comments of Frontier Corporation in the above-referenced proceeding. A copy is also being filed via the Internet.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: Ms. Sheryl Todd, Accounting Policy
Division

International Transcription Service

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
MCI Petition for Declaratory Ruling)	
)	

**COMMENTS OF
FRONTIER CORPORATION**

Introduction

Frontier Corporation ("Frontier"), pursuant to the Bureau's Public Notice,¹ submits these comments on MCI's petition for a declaratory ruling that carriers are permitted to recover their federal universal service contributions through assessments based upon both interstate and intrastate usage.² The Commission should respond to the Petition in two ways. First, the Commission should deny the petition because it is flatly contradicted by the Commission's *Universal Service Order*.³ Second, the Commission should commence a rulemaking to consider the substantive merits of MCI's request.⁴

¹ Public Notice, *Pleading Cycle Established for MCI Petition for Declaratory Ruling*, DA 98-682 (Com. Car. Bur. April 10, 1998) ("Public Notice").

² MCI Petition for Declaratory Ruling (April 3, 1998) ("Petition").

³ *Federal-State Joint Board on Universal Service*, CC Dkt. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd. 8776 (1997).

⁴ To the extent that the Commission considers this aspect of Frontier's comments a petition for rulemaking, Frontier requests that the Commission so treat it.

Argument

I. THE COMMISSION SHOULD DENY MCI'S PETITION.

MCI seeks a declaration that "carriers are not precluded by the Universal Service Order from imposing a charge on interstate customers that is based on the customers' total billed revenues, including intrastate revenues, to recover federal universal service costs."⁵ The Commission cannot grant MCI the relief that it seeks. The *Universal Service Order* clearly and unambiguously contradicts MCI's proffered interpretation.

As the Bureau observes in the Public Notice, "[t]he Commission concluded that carriers contributing to the universal service support mechanisms may recover their contributions through rates for only interstate services."⁶ Although this characterization is not entirely accurate,⁷ it is correct to the extent that it interprets the *Universal Service Order* as precluding recovery based upon intrastate revenues. In the *Universal Service Order*, the Commission concluded:

...we have decided to permit recovery of contributions for the support mechanisms for eligible schools, libraries *solely* via rates for *interstate* services.....Therefore carriers may recover these contributions *solely* through rates for interstate services, in the same manner that they will recover their contributions to the high cost and low-income support mechanisms, as described above.⁸

With respect to the latter, the Commission also conclusively determined that:

We have determined that we will assess and permit recovery of contributions to the rural, insular, and high cost and low-

⁵ Petition at 1.

⁶ Public Notice at 1.

⁷ See *infra* at 3-4.

⁸ Universal Service Order, 12 FCC Rcd. at 9203-4, ¶ 838 (emphasis added).

income support mechanisms based *only* on interstate revenues.⁹

The Commission's rule permits it to issue a declaratory ruling "to eliminate controversy or remove uncertainty."¹⁰ Here, there is no controversy or uncertainty. The Universal Service Order is clear on its face and does not admit of the interpretation that MCI seeks.¹¹ The Commission should deny the petition.¹²

II. THE COMMISSION SHOULD INITIATE A RULEMAKING TO CONSIDER THE SUBSTANTIVE MERITS OF MCI'S PETITION.

Although MCI's petition lacks procedural merit, it does raise a significant issue that the Commission should address. Frontier agrees with MCI that carriers should be free to recover their federal universal service contributions in any manner that they deem most advisable. The current rules permit carriers other than incumbent local exchange carriers to recover their federal universal service contributions in any number of ways.¹³ Carriers may recover these contributions through usage-based

⁹ *Id.*, 12 FCC Rcd. at 9198, ¶ 824 (emphasis added).

¹⁰ 47 C.F.R. § 1.2.

¹¹ Moreover, there are compelling public policy reasons to deny the petition. Those carriers (such as MCI) have conferred upon themselves an unwarranted competitive advantage over other carriers (such as Frontier) that have complied with the Commission's directives. The former carriers are able to portray to customers the fact that their universal service surcharges are relatively low. In the aggregate, of course, any true savings are illusory. Nonetheless, Frontier has received many inquiries from its customers that the level of its surcharge is higher than that of other carriers, even though all are seeking to recover -- dollar-for-dollar -- their federal universal service contributions.

¹² Until the Commission concludes the rulemaking that Frontier requests in Part II of these comments, the Commission should forthwith direct carriers that are attempting to recover some portion of their federal universal service contributions based upon intrastate services to cease that practice.

¹³ The rules permit incumbent local exchange carriers to recover their federal universal service contributions through access charges. Other than requiring that

surcharges on interstate and/or international usage. They may recover these contributions through a flat-rated, per invoice, charge. They may also, if they choose, recover their contributions from their first customer or the customer that appears first alphabetically in their respective billing systems.¹⁴

The only option that the *Universal Service Order* forecloses is a usage-based assessment based in any part upon intrastate revenues. The major reason proffered by the Commission for its approach is perceived jurisdictional impediments.¹⁵ In fact, there are no such jurisdictional difficulties. Dollars are fungible and whatever methodology an individual carrier employs, it will be recovering a federally-mandated cost through a federal recovery mechanism. The basis upon which this charge is calculated has no jurisdictional significance.¹⁶

MCI's approach to recovering federal universal service contributions -- although it cannot be reconciled with the Commission's directives -- is one that merits further consideration. The Commission should initiate a rulemaking on this issue.

such charges be broken out as a separate line item on access bills, Frontier does not suggest that the Commission change this approach.

¹⁴ Frontier seriously doubts that any rational carrier would recover its contributions in this manner. However, the Universal Service Order does not preclude this approach. See Universal Service Order, 12 FCC Rcd. at 9210, ¶ 853. (refusing to mandate, but not precluding, recovery of contributions through non-revenue based charges).


¹⁵ Universal Service Order, 12 FCC Rcd. at 9198 (¶¶ 825-26), 9204 (¶ 839).

¹⁶ Although the Commission expresses concern that recovery of universal service costs based upon intrastate revenues could result in "increases in rates for basic residential dialtone services " (Universal Service Order, 12 FCC Rcd. at 9203, ¶ 839), the fact remains that universal service contributions -- particularly of the magnitude that the Commission has ordered -- will ultimately be passed-through to end-user customers..

Conclusion

For the foregoing reasons, the Commission should act upon MCI's petition in the manner suggested herein.

Respectfully submitted,



Michael J. Shortley, III

Attorney for Frontier Corporation

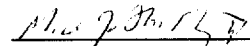
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April 23, 1998

Certificate of Service

I hereby certify that, on this 23d day of April, 1998, a copy of the foregoing Comments of Frontier Corporation was served by first-class mail, postage prepaid, upon:

Mary J. Sisak
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006



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